

WEXLER WALLACE LLP

January 8, 2016

EDWARD A. WALLACE  
Direct 312.589.6272  
eaw@wexlerwallace.com

The Honorable Charles R. Breyer  
United States District Court  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

**Re: *In re: Volkswagen “Clean Diesel” Mktg., Sales Practices, and Prods. Liab. Litig.*,  
3:15-MD-2672-CRB (N.D. Cal.)  
Edward A. Wallace Application for Lead Counsel**

Dear Judge Breyer,

Pursuant to Your Honor’s Pretrial Orders 1 and 2, I, Edward A. Wallace of Wexler Wallace LLP, hereby respectfully submit this Application for appointment as Lead Counsel or, alternatively, to the Plaintiffs’ Steering Committee for the above-captioned multidistrict litigation. While I have experience in all facets of complex, multidistrict litigation involving many of the issues these cases present, I believe that I am well-suited for a position where I can not only facilitate communication between the attorneys in this matter and state and federal authorities, but also serve as a liaison between lead counsel and the countless other attorneys involved, as well as focus on the unique damages and legal questions this case presents.

**1. Professional experience in leading and prosecuting multi-district litigation and class actions.** Wexler Wallace is nationally recognized as a leading firm in complex class action and multidistrict litigation, specializing in antitrust, consumer protection, mass tort, and whistleblower litigation. I personally have been appointed to numerous leadership positions in high-profile cases, including to the plaintiffs’ steering committee in the Pelvic Repair Systems Products Liability Litigation against C.R. Bard, American Medical Systems, and Ethicon (MDL Nos. 2187, 2325, and 2327). In these cases, I have been on several trial teams and have tried cases to verdict in a complex case structure involving both state and federal courts. For example, I served as lead trial counsel in *Huskey v. Ethicon*, 12-cv-0521 (S.D.W. Va.), tried before the Honorable Judge Joseph R. Goodwin, and secured the first plaintiffs’ verdict in federal court involving Ethicon transvaginal surgical mesh. I have also been appointed to leadership positions in other complex litigation, including *In re Fluidmaster, Inc., Water Connection Products Liability Litigation*, MDL No. 2575 (N.D. Ill.) (interim liaison counsel); *Roberts, et al. v. Electrolux Home Products, Inc.*, No. 12-cv-01644 (C.D. Cal.) (co-lead counsel in consolidated, nation-wide class action); *In re Medtronic, Inc. Implantable Defibrillators Prod. Liab. Litig.*, MDL No. 1726 (D. Minn.) (plaintiffs’ steering committee and third-party payor committee); *In re Kugel Mesh Hernia Patch Prod. Liability Litig.*, MDL No. 1842 (D.R.I.) (plaintiffs’ steering committee); *Carter v. Allstate Ins. Co.*, No. 02-CH-16092 (Cir. Ct. Cook County, Illinois) (co-lead counsel); *Virginia M. Damon Trust v. Mackinac Financial Corp., f/k/a North Country Financial Corp.*, Case No. 2:03-CV-0135 (W.D. Mich.) (co-lead counsel); and others.

My firm has extensive experience in working alongside and coordinating with municipal, state, and federal regulatory agencies through our active whistleblower practice and in representing

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these entities, directly. For example, we represent the City of Chicago in pioneering litigation against numerous drug manufacturers for deceptive and unfair marketing of opioid prescription drugs. *City of Chicago v. Purdue Pharma, L.P., et al.*, No. 14 C 4361 (N.D. Ill.). I have also represented several other entities and municipalities including the City of Pontiac, Michigan, Oakland County, Michigan, and other counties across the nation. In a case where I served as sole lead counsel, I had to coordinate with various Illinois state entities—including the Office of the Governor, Attorney General, and Comptroller—to finalize a comprehensive settlement for funeral homes, trustees, pre-need contract purchasers and trust accounts affected by the collapse of the Illinois Funeral Directors Association (“IFDA”). The Honorable Judge G. Patrick Murphy praised my leadership in this capacity. *Clancy-Gernon Funeral Homes, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, No. 09 Civ. 1008 (S.D. Ill.).

My experience has earned the respect of my peers, who have rated me “AV-Preeminent” by Martindale-Hubbell. I have also been selected as a “local litigation star” by Benchmark Plaintiff in 2012, 2013, 2014, and 2015; named an Illinois Super Lawyer in 2014, 2015, and 2016 and recognized by Super Lawyers as a “Rising Star” in 2009.

Furthermore, my colleagues, including founding partner Kenneth A. Wexler, have been at the forefront of complex pricing litigation and have remained in the vanguard of that pursuit as the law has developed. Our expertise in pricing damages is well-recognized. Wexler Wallace was recently part of a team that conducted a six-week trial to verdict in *In re Nexium (Esomeprazole) Antitrust Litig.*, 12-md-02409 (D. Mass.). Similarly, Wexler Wallace served as co-lead counsel in *In re Pharmaceutical Indus. Average Wholesale Price Litig.*, MDL No. 1456 (D. Mass.), an action against twenty-two pharmaceutical manufacturers for artificially inflating the benchmark price for drug reimbursement. The firm served as a critical part of the trial team against four of the largest defendants, resulting in a recovery totaling approximately \$350,000,000. Wexler Wallace also reached a \$350,000,000 settlement in *New England Carpenters Health Benefits Fund v. First DataBank*, No. 1:05-cv-11148 (D. Mass.), a RICO class action involving fraudulent pricing of pharmaceuticals. Additionally, and importantly for this application, my firm has extensive experience in prosecuting cases against automobile corporations, and the unique damages issues those cases present. See *DeMaria v. Nissan North America, Inc.*, No. 1:15-cv-03321 (N.D. Ill.); *Sharma, et al. v. BMW of North America, LLC*, No. 3:13-cv-02274 (N.D. Cal.); *Catalano v. BMW of North America, LLC, et al.*, No. 1:15-cv-04889 (S.D.N.Y.); and *Williams, et al. v. Subaru of America, Inc., et al.*, No. 13-cv-1311 (C.D. Cal.). My firm is also actively working with other firms on other automobile class actions nation-wide.

## 2. Names and contact information of judges in the above-mentioned litigation.

<i>IFDA Cases</i>	Hon. G. Patrick Murphy	S.D. Ill.	(618) 482-9173
<i>Pelvic Mesh Cases</i>	Hon. Joseph R. Goodwin	S.D.W. Va.	(304) 347-3192
<i>In re Fluidmaster</i>	Hon. Robert M. Dow, Jr.	N.D. Ill.	(312) 435-5665
<i>Roberts v. Electrolux</i>	Hon. Christina A. Snyder	C.D. Cal.	(213) 894-3433
<i>Kugel</i>	Hon. Mary M. Lisi	D.R.I.	(401) 752-7204
<i>Carter v. Allstate</i>	Hon. Kathleen M. Pantle	Cook County	(312) 603-6025
<i>Damon</i>	Hon. Gordon J. Quist	W.D. Mich.	(616) 456-2253

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**3. Willingness and ability to immediately commit to time-consuming litigation.** My firm presently employs sixteen attorneys in its Chicago office, along with a full staff of legal assistants, paralegals, and clerks, and is able to commit substantial resources, here.

**4. Willingness and ability to work cooperatively with other counsel.** Although many lawyers are qualified for appointment to the Plaintiffs' Steering Committee, it is my strong opinion that the ability to work with others—plaintiffs' and defense counsel alike—is one of, if not the most, important issue in cases like this one. I have had the opportunity to play just about every role in consolidated MDL proceedings. Along the way, I have unfortunately seen cases where there is a complete lack of communication and infighting between leadership and the other lawyers involved in the litigation. I believe I can help maximize communication and serve as a facilitator between the lawyers on the Plaintiffs' Steering Committee, opposing counsel, and the Court, as well as the many lawyers and clients not serving on the committee. Cooperation and information sharing is paramount—such as communicating with the many attorneys and plaintiffs involved in these cases—and my ability to advocate for them will add value.

I have a strong reputation for working with co-counsel and defense counsel towards efficient and just resolution of consumer fraud and mass tort cases. Notably, courts have recognized my ability to work with others. In a case in which I was sole lead counsel, I worked directly with thirteen different defense firms, the Comptroller of the State of Illinois, and the Office of the Illinois Attorney General. Judge Patrick Murphy described the resolution, which involved massive public and private entity coordination, as a “remarkable settlement under all the circumstances.” *Tipsword v. IFDA Services, Inc. et al.*, 3:09-cv-00390, Transcript of Hearing at 9 (S.D. Ill. Feb. 17, 2012). I have strong relationships with other firms in this MDL that have significant automobile experience (Kershaw, Cook & Talley; Berger & Montague, P.C.; Sommers Schwartz PC; Law Offices of Joseph W. Dunn; Mazie Slater Katz & Freeman, Whitfield Bryson & Mason; Greg Coleman Law; and other applicants). We are co-counsel with several of these firms in automobile cases pending across the country.

**5. Access to Resources to prosecute the litigation in a timely manner.** With a team of experienced litigators and staff, my firm is willing and able to fund all the of the obligations to litigate this MDL. Wexler Wallace is a well-established and successful law firm with financial resources necessary to pursue a case of this magnitude.

**6. Willingness to serve as lead counsel, a member of a steering committee, or both.** I am happy to serve in whatever capacity the Court deems appropriate.

**7. Category or categories of plaintiffs the applicant wants to specifically represent.** I seek to represent all plaintiffs, vehicles owners, lessees, and/or dealerships. If the Court deems it appropriate to fulfill any of the requirements under Rule 23, I would also be willing to represent a specific subset of individuals in order to ensure that they are adequately represented.

Respectfully submitted,

/s/ Edward A. Wallace

cc: All Counsel of Record (via ECF)



## FIRM RESUME

Since its founding in 2001, Wexler Wallace has served as Co-Lead Counsel and played other significant roles in a number of complex class actions. In cases in which the firm has served as Co-Lead Counsel, it has recovered over a billion dollars for its clients and class members. Listed below are some of the firm's representative settlements and verdicts.

CASE	COURT	RECOVERY
<i>Huskey v. Ethicon</i> , Case No. 12-cv-0521	S.D.W. Va.	\$3.27M (jury verdict)
<i>Roberts v. Electrolux Home Products, Inc.</i> , Case No. 12-cv-01644	C.D. Cal.	Settlement valued at more than \$35.5M
<i>In re Hypodermic Products Antitrust Litigation</i> , MDL No. 1730	D.N.J.	\$22M
<i>New England Carpenters Health Benefits Fund v. First Databank</i> , Case No. 05-cv-11148	D. Mass	\$350M settlement with McKesson; \$2.7M with FDB and Medispan
<i>In re Pharmaceutical Industry Average Wholesale Price Litigation</i> , MDL No. 1456	D. Mass.	Multiple settlements totaling more than \$350M
<i>In re Guidant Defibrillators Products Liability Litigation</i> , MDL No. 1708	D. Minn.	\$195M
<i>IFDA Funeral Director Cases</i>	S.D. Ill.	\$41.15M
<i>In re Flonase Antitrust Litigation</i> , Case No. 08-cv-3301	E.D. Pa.	\$46M
<i>In re OSB Antitrust Litigation</i> , Case No. 06-cv-00826	E.D. Pa.	\$120M
<i>In re Air Cargo Shipping Services Antitrust Litigation</i> , MDL No. 1775	E.D.N.Y.	\$85M
<i>In re Pet Food Products Liability Litigation</i> , MDL No. 1850	D.N.J.	\$24M
<i>In re Webloyalty.com, Inc. Marketing and Sales Practices Litigation</i> , MDL No. 1820	D. Mass.	Allowed customers to recover up to 100% of unauthorized charges
<i>In re BP Prods. North America, Inc. Antitrust Litigation</i> , MDL No. 1801	N.D. Ill.	\$15.25M
<i>In re Medtronic Inc. Implantable Defibrillator Products Liability Litigation</i> , MDL No. 1726	D. Minn.	\$75M
<i>In re Pressure Sensitive Labelstock Antitrust Litigation</i> , MDL No. 1556	E.D. Pa.	\$46.5M
<i>In re Synthroid Marketing Litigation</i> , MDL No. 1182	N.D. Ill.	\$87.4M
<i>Vista Healthplan, Inc. v. Bristol-Myers Squibb Co.</i> , Case No. 01-cv-01295	D.D.C.	\$135M settlement
<i>Nichols v. Smithkline Beecham Corp.</i> ("Paxil"), Case No. 00-cv-6222	E.D. Pa.	\$65M
<i>Carter v. Allstate Ins. Co.</i> , Case No. 02-CH-16092	Circuit Court of Cook County, Illinois	Favorable 38-state settlement estimated value to be \$22.5 million with estimated pay-out to each class member near \$2,000



## FIRM RESUME

EDWARD A.  
WALLACE

PARTNER

Ed joined the firm in February 2000, a little over a month after its founding. Since then, he has helped lead the firm to national prominence. He became a partner of the firm in 2003 and joined Ken Wexler as an equity partner in 2006.

Ed focuses his practice on large scale multi-party complex litigation, and has been asked to serve in leadership positions in numerous high-profile cases, including recent appointments in securities litigation and mass torts. In August 2014, Ed led a trial team that achieved the first verdict involving a transvaginal sling mesh (a device used to treat stress urinary incontinence) in federal court. Wexler Wallace, along with co-counsel, tried this defective mesh product case, securing a \$3.27 million verdict for Plaintiff Jo Huskey, a 52-year-old woman who was implanted with the mesh in 2011. Ed has been critical in the development of the firm's mass tort practice, and, in the process, he has gained a national reputation for integrity, efficiency, strategic planning, understanding the relevant science, and achieving success.

Ed's hard work led to his recognition as an Illinois Super Lawyer in 2014 and 2015, an award given annually to no more than 5 percent of lawyers in the state. Ed has an AV® Preeminent™ rating by Martindale-Hubbell, the highest rating a lawyer can obtain, indicating a very high to preeminent legal ability and exceptional ethical standards. Every year since its inaugural edition in 2012, Ed also has been named an Illinois Local Litigation Star by Benchmark Plaintiff.

He is admitted to the bar in Illinois and is licensed to practice before the Illinois Supreme Court, the United States District Court for the Northern and Southern Districts of Illinois, the United States District Court for the Western District of Michigan, the United States District Court for the District of Colorado, and the United States Court of Appeals for the Third and Seventh Circuits. He also has been admitted *pro hac vice* in many courts around the country.

Ed is a member of the American Bar Association and is a former Consumer Protection Law Subcommittee Newsletter Co-Chair. He also is a member of the Chicago Bar Association, where he is a member of the Class Action Committee, the Illinois State Bar Association, the National Association of Shareholder and Consumer Attorneys, Public Justice, and the American Association for Justice ("AAJ"). Within AAJ, he belongs to the Commercial Law Section, the Product Liability Section, and the Section on Toxic, Environmental and Pharmaceutical Torts. At the AAJ's recent annual convention, Ed was re-elected co-chair for the Kugel Mesh Litigation Group.

Ed is a 1995 graduate of DePaul University College of Law. He received a Bachelor of Arts degree in 1991 from Eastern Illinois University.